SUPREME COURT OF THE UNITED STATES.

No. 223.

THE PUGET SOUND AGRICULTURAL COMPANY, PL'FF IN ER.,

vs.

THE COUNTY OF PIERCE.

IN ERROR TO THE SUPREME COURT OF WASHINGTON TERRITORY.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the Territory of Washington, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court before you, between the Puget Sound Agricultural Company and the county of Pierce, a manifest error hath happened, to the great damage of the said Puget Sound Agricultural Company, as by their complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington
2 on the second Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Roger B. Taney, chief justice of the said Supreme Court, the 20th day of January, in the year of our Lord one thousand eight hundred and sixty-two.

[SEAL.]

RICHARD LANE,
Clerk of the supreme court of the Territory of Washington.

Allowed this 20th day of January, A. D. 1862.

(Signed) C. C. HEWITT,
Chief Justice of W. T.

(Signed) E. P. OLIPHANT,
Associate Justice of W. T.

3 TERRITORY OF WASHINGTON,
Office Clerk Supreme Court, ss:

I, Richard Lane, clerk of the supreme court of the Territory of Washington, do hereby certify that the foregoing is a full, true, complete, and correct copy of the original writ of error in the case of the Puget Sound Agricultural Company *versus* Pierce County, filed in my office on the 21st day of January, A. D. 1862.

In testimony whereof, I have hereunto set my hand and affixed [SEAL.] the seal of the supreme court of the Territory of Washington, at Olympia, W. T., on this 29th day of August, A. D. 1862.

RICHARD LANE,
Clerk Sup. Court of Wash. Territory.

4 The United States of America to the county of Pierce, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the Territory of Washington, wherein the Puget Sound Agricultural Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why judgment rendered against the said plaintiff in error, as in thesaid writ of error mentioned, should not be

corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable C. C. Hewitt, chief justice of the supreme court of the Territory of Washington, this 20th day of January, in the year of our Lord one thousand eight hundred and sixty-two.

(Signed) C. C. HEWITT, *C. J. W. T.*
(Signed) E. P. OLIPHANT,
Asso. Jus. S. Court W. T.

5 On this 29th day of January, in the year of our Lord one thousand eight hundred and sixty-two, personally appeared Thomas Prather before me, the subscriber, a United States commissioner, and makes oath that he delivered a true copy of the within citation to George Gallagher, auditor of Pierce County.

(Signed) THOMAS PRATHER.
(S'd) R. M. WALKER,
U. S. Com. 2nd jud'l dist., W. T.

TERRITORY OF WASHINGTON,
Office Clerk Sup. Court, ss:

I, Richard Lane, clerk of the supreme court of the Territory of Washington, do hereby certify that the foregoing is a full, true, correct, and complete copy of the *the* original citation in the case of the Puget Sound Agricultural Company *versus* Pierce County, filed in my office on the 21st day of January A. D. 1862.

In testimony whereof, I have hereunto set my hand and
6 [SEAL.] affixed the seal of the said supreme court of Washington Territory, at Olympia, on this 29th day of August, A. D. 1862.

RICHARD LANE,
Clerk Sup. Court of Washington Territory.

Know all men by these presents that we, John R. Flemming, U. G. Warlass, Jas. Cushman, and Isaac Lightner, are held and firmly bound unto the county of Pierce in the full and just sum of twelve thousand dollars, to be paid to the said county of Pierce or its certain attorney, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals, and dated this twentieth day of January, in the year of our Lord one thousand eight hundred and sixty-two.

Whereas, lately, at a term of the supreme court for the Territory of Washington, begun and held at Olympia, on the first Monday of December, 1861, in a suit depending in said court between the Puget Sound
7 Agricultural Company and the county of Pierce, a judgment was rendered against the said Puget Sound Agricultural Company, and the said Puget Sound Agricultural Company having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said county of Pierce, citing and admonishing to be and appear at a Supreme court of the United States to be holden at Washington the second Monday of December next:

Now, the condition of the above obligation is such that if the said Puget Sound Agricultural Company shall prosecute their said writ of error to effect, and answer all damages and costs if they fail to make their plea good,

then the above obligation to be void; else, to remain in full force and virtue.

(Signed) JNO. R. FLEMMING. [SEAL.]
U. G. WARLASS. [SEAL.]
JAS. CUSHMAN. [SEAL.]
ISAAC LIGHTNER. [SEAL.]

Sealed and delivered in presence of—
B. F. KENDALL.
R. M. WALKER.

8 Examined and approved this 20th day of January, 1862.
(Signed) C. C. HEWITT, *C. J. of W. T.*

TERRITORY OF WASHINGTON,
Office Clerk Sup. Court, ss:

I, Richard Lane, clerk of the supreme court of Washington Territory, do hereby certify that the foregoing is a full, true, complete, and correct copy of the original bond filed in my office on the 21st day of January, 1862, in the case of the Puget Sound Agricultural Company *versus* Pierce County, as fully as the same remains of record ane on file in my office.

In testimony whereof, I have hereunto set my hand and affixed [SEAL.] the seal of the supreme court of Washington Territory, at Olympia, W. T., on this 29th day of August, 1862.

RICHARD LANE,
Clerk Sup. Court of Washington Territory.

9 William F. Tolmie, agent and member of the Puget Sound Agricultural Company, comes now at this May term, A. D. 1859, of the hon. commissioners' court for Pierce County, Washington Territory, and moves the court to correct the assessment roll by striking therefrom so much as is assessed against said company for the year 1859 upon lands claimed in Pierce County by said company under the treaty of 1846 with Great Britain, and assigns for grounds the following reasons:

1st. The treaty of 1846, upon which said company base their right to hold lands in said county, does not confirm to the company lands, but contains a contract that the lands to them belonging shall be confirmed, or purchased at a fair valuation, and that the United States government has not by any subsequent act confirmed to said company the said lands.

2nd. A large portion of the land claimed by said company in said
10 county, and upon which said assessment is made, is now occupied by citizens of the United States, claiming to hold the same under the donation law; that said citizens hold the said land adversely to and against the interests of said company, and that said company is not now in anywise benefitted by the said land so held by said citizens.

3rd. The levying and collection of said tax upon said lands is in direct contravention of the provisions of the organic act, in this, it is not equal and uniform.

(Signed) WM. F. TOLMIE, *Ag't, &c.*,
By FRANK CLARK, *Att'y.*

TERRITORY OF WASHINGTON, *County of Pierce, ss:*

Personally appeared before me, the undersigned, Wm. F. Tolmie, who, being first duly sworn, says that the facts set forth in the foregoing application

for correcting of assessment roll, are true to the best of his knowledge and belief.

(Signed) WM. F. TOLMIE.

11 Subscribed and sworn to before me this 5th day of May, 1859.

(Signed) HENRY E. BRADLEY,
Auditor, Pierce County, W. T.

I hereby certify that the foregoing is a full, true, and correct copy of the original on file in this office.

In witness whereof, I have hereunto set my hand and affixed the adopted seal of the hon. board of county commissioners' court of Pierce County, Washington Territory, this 12th day of September, A. D. 1856.

(Signed) GEO. GALLAGHER,
Auditor, Pierce County.

12 Estimated average of land under fence claimed by the Puget Sound Agricultural Company in Pierce County, Washington Territory:

At Fort Nisqually	160 acres.
Muck	200
Elk Plain	150
Ashland	40
Cowies	60
Kulkulch	20
Treehatchi	20
Sastuck	90
	740 acres.

At Tlithlow, (formerly Mr. Dean's residence,) improved by the company, but from which they are forcibly debarred, 80. Unable to say without reference to books what extent of enclosure there was at certain of the above-named places prior to the date of the boundary treaty in 1846.

(S'd) W. F. TOLMIE,
Agent Puget S. Agricu'l Co.

Steilacoom, P. C., W. T., county commissioners' court-house, Saturday, May 7th, 1859.

13 I hereby certify that the foregoing is a true, full, and correct copy of the original in this office.

In witness whereof, I have hereunto set my hand and the adopted
[SEAL.] seal of the commissioners' court of Pierce County, this 12th day of September, A. D. 1859.

(Signed) GEO. GALLAGHER,
Auditor Pierce County, W. T.

William F. Tolmie, agent, and member of the Puget Sound Agricultural Company, comes now at the May term, A. D. 1859, of the hon'ble commissioners' court of Pierce County, Washington Territory, and moves the court to correct the assessment roll by striking therefrom so much as is assessed against said company for the year 1859 upon lands belonging to said company, and assigns for grounds the following reasons:

The levying and collection of said tax on lambs is in direct contra-
14 vention of the provisions of the organic act, in this, that it is not equal and uniform, the young of no other domestic animal save the

sheep being in this county subjected to taxation, whilst in every other county of the Territory the young of all descriptions of live stock are, until one year old, exempt from taxation.

(S'd) WILLIAM F. TOLMIE,
Agent and Member P. S. A. Co.

Steilacoom, W. T., May 22nd, 1859.

I hereby certify that the foregoing is a full, true, and correct copy of the original on file in this office.

In witness whereof, I have hereunto set my hand and affixed the [SEAL.] adopted seal of the commissioners' court of Pierce County, Washington Territory, this 12th day of September, A. D. 1859.

(Signed) GEO. GALLAGHER,
Auditor, Pierce County, W. T.

15 Motion to amend, pending motion for correction of assessment roll so far as relates to land tax of Puget Sound Agricultural Company, &c.

Said Puget Sound Ag'l Co. moves to amend said motion by adding to 1st reason assigned "and that said company have not now such an interest in said land as renders them subject to taxation."

Dated May 23d, 1859.

(S'd) FRANK CLARK,
Att'y for Puget Sound Ag'l Co., &c.

I hereby certify that the foregoing is a full, true, and correct copy of the original motion on file in this office.

In witness whereof, I have hereunto set my hand and affixed the [SEAL.] adopted seal of the commissioners' court of Pierce County, Washington Territory, this 12th day of September, A. D. 1859.

(Signed) GEO. GALLAGHER,
Auditor, Pierce County, W. T.

16 Commissioners' court, May term, 1859.

MONDAY, *June 4th.*

Present: Messrs. Chambers, Murry, and Downey.

Consideration of motion to correct assessment roll. Doctor W. F. Tolmie, agent and member, &c., being asked what quantity of lands were surveyed and claimed by the Puget Sound Agricultural Company, answered that the company surveyed and claimed about 161,000 acres, as estimated by Surveyor General Tilton and himself, said estimate being made from a plat of the survey on file in surveyor general's office.

He being further asked the value of said lands, for answer said he refused to place any valuation on them whatever, and verbally protested against the assessing and taxing said lands.

It was thereupon ordered by the court that the lands be valued at one dollar per acre and that they be assessed at that rate.

17 I hereby certify that the foregoing is a true, full, and correct copy of the record.

In witness whereof, I have hereunto set my hand and the adopted [SEAL.] seal of the commissioners' court, this 15th day of September, A. D. 1859.

(Signed) GEO. GALLAGHER,
Auditor of Pierce County, W. T.

To the hon. the board of commissioners of Pierce County, Washington Territory:

GENTLEMEN: You are hereby notified that the Puget Sound Agricultural Company appeal from the decision rendered by your hon. board upon the motion filed May 5th, 1859, and amendment thereto filed May 23d, 1859, for the correction of assessment roll so far as relates to tax assessed against said company for the year 1859, upon lands claimed in said county of Pierce under the treaty of 1846 with Great Britain. And that the said ap-
18 peal will come on to be heard at the next September term of the district court in and for said county of Pierce.

Steilacoom, June 9th, 1859.

(Signed) WM. F. TOLMIE,
Agent, &c., Puget Sound Ag'l Co.

I hereby certify that the foregoing is a full, true, and correct copy of the original notice on file in this office.

In witness whereof, I have hereunto set my hand and affixed
[SEAL.] the adopted seal of the board of county commissioners of Pierce County, Washington Territory, this 12th day of September, A. D. 1859.

(Signed) GEO. GALLAGHER,
Auditor, Pierce County, W. T.

Know all men by these presents that we, William F. Tolmie, agent and member of the Puget Sound Agricultural Company, as principal, and Andrew F. Byrd and O. P. Meeker, as sureties, are held and firmly bound unto
19 the board of commissioners of the county of Pierce, Washington Territory, and to their successors in office, for and in behalf of said county, in the sum of two thousand eight hundred and seventeen dollars and fifty cents, lawful money of the United States, to be paid to the said commissioners or to their successors in office for the use of said county or its assigns, for which payment, well and truly to be made, we jointly and severally bind ourselves, our heirs, executors, and adminstrators.

Sealed with our seals and dated this 9th day of June, A. D. 1859.

Whereas the condition of the above obligation is such that William F. Tolmie, agent and member of the Puget Sound Agricultural Company, has appealed to the next September term of the district court for Pierce County, W. T., from the decision rendered by the board of commissioners of Pierce County, W. T., upon a motion filed May 5th, 1859, and amendment thereto filed May 22d, 1859, for the correction of assessment roll so far as relates to the tax assessed against said company for the year 1859, upon land
20 claimed in said county of Pierce under the treaty of 1846 with Great Britain: Now, therefore, if the said William F. Tolmie, agent and member as aforesaid, shall pay, or cause to be paid, all costs that shall be adjudged against said appellant on said appeal, then this obligation shall be void; otherwise, to remain in full force and virtue.

WILLIAM F. TOLMIE, *Ag't, &c.* [SEAL.]
ANDREW F. BYRD. [SEAL.]
O. P. MEEKER. [SEAL.]

In presence of—
GEO. GALLAGHER.
W. H. WOOD.

I hereby certify that the foregoing is a full, true, and correct copy of the original bond on file in this office.

In witness whereof, I have hereunto set my hand and affixed the

[SEAL.] adopted seal of the hon. board of commissioners' court of Pierce County, Washington Territory, this 12th day of September, A. D. 1859.

(Signed) GEO. GALLAGHER,
Auditor, Pierce County, W. T.

21 *Motion to dismiss.*

District court for Pierce Co., W. T., March term, 1860.

PUGET SOUND AG'L Co., appellants,
vs.
COMMISSIONERS OF PIERCE Co., W. T., respondents.

Respondents, by counsel, moved the court to dismiss the appeal in the above case, and assign for cause thereof—

1st. That this court has no jurisdiction of the case, because—

1st. The parties appellant are subjects of a foreign power and not citizens of the United States.

2nd. That they are non-residents of the United States and this Territory.

3rd. They are a foreign association or joint stock company.

(Signed) GARFIELDE, *for Respondents.*

Motion overruled. Exception taken by counsel, and exception allowed.

(Signed) O. B. McFADDEN,
C. J. and J. of P. Co. Court.

March 29th, 1860.

22 *Appeal from the court of county commissioners for the county of Pierce.*

In the district court of Pierce County, September term, 1859.

PUGET SOUND AGRICULTURAL COMPANY
vs.
THE COUNTY OF PIERCE.

It is admitted upon the part of the appellants as follows:

1st. That the appellants have claimed to be the owners of the lands on which they are required to pay taxes by the appellee, and that they have had the same surveyed and platted, and the plat thereof has been by them filed in the office of the surveyor general for the Territory of Washington.

2nd. That the government of the United States, in surveying the lands adjacent to the said claim of appellants, has stopped the section lines at the boundaries of said claim and has not included the same in the public survey.

3rd. That a portion of the land included within the boundaries of said claim has been occupied as a military station by the government of
23 the United States, said government paying rent therefor to said appellants.

4th. That said appellants have attempted to eject, by process of law, persons occupying a portion of said land and claiming the same under the provisions of the donation law.

It is admitted by the appellee as follows:

1st. That a large portion of the lands for which said company are taxed are unenclosed lands, and a portion thereof is occupied and claimed by citizens of the United States, claiming the same adversely to the appellants and under, as they allege, the provisions of the donation law.

2nd. That American citizens in the county of Pierce who have lived over four years on their donation claims have not been taxed for the same, al-

though they are outside of the claim of the appellants, nor is there any tax levied on any real estate in said county other than the lands of said appellants.

3rd. The government of the United States has not designated the
24 metes and bounds of the claim of the Puget Sound Agricultural Company except by recognizing the metes and bounds set out by the company in its instructions to the surveyor general.

4th. That the land occupied by the government of the United States as a military station and for which rent was paid to said appellants had some old buildings situated thereon, which have since been torn down, the said government still occupying said land and paying rent therefor.

(Signed) WALLACE & CHENOWETH,
Att'ys for Appellants.

(Signed) SMITH & GARFIELDE,
Att'ys for Appellee.

25 *Additional facts agreed upon by counsel in the above cause, to be filed and used upon the hearing.*

District court of Pierce Co., W. T., March term, 1860.

PUGET SOUND AG'L Co., appellants,
vs.
PIERCE COUNTY, respondent.

1st. It is agreed that the Puget Sound Agricultural Company was organized in Great Britain, and has remained and continued a foreign association, joint stock company, or corporation.

2nd. That the members of said company, or a majority thereof, were, and still continue to be, non-residents of the United States and subjects of a foreign government.

(Signed) S. GARFIELDE, *Att'y for Respondents.*
(Signed) W. H. WALLACE, *Att'y for Appellant.*

26 *Appeal from the decree of taxation of the county commissioners for the county of Pierce, Washington Territory.*

In the district court for Pierce Co., W. T., September term, 1859.

PUGET SOUND AG'L Co., appellants,
versus
PIERCE COUNTY, WASH. TERR'Y, appellee.

This cause came on to be heard on an agreed statement of facts, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court that the order of taxation made by the county commissioners for the county of Pierce on the lands claimed by the Puget Sound Agricultural Company be, and the same is hereby, affirmed, with costs.

(Signed) O. B. McFADDEN,
C. J. and Judge of the Dist Court for the County of Pierce, Washington Territory.

27 PUGET SOUND AGRICULTURAL Co., appellants,
vs.
PIERCE COUNTY, W. T., appellee.

To the appellee in the above-entitled cause:

You are hereby notified that the appellants have this day filed with me a

precipe, directing me to notify you that they will take an appeal to the supreme court of W. T. from the judgment of the district court rendered in said cause, the said cause being an appeal from the decree of taxation of the county commissioners for the county of Pierce, W. T.

The supreme court will convene on the first Monday in December next.

[SEAL.] In witness whereof, I have hereunto set my hand and affixed the seal of said district court this 30th day of November, A. D. 1859.

(Signed) WM. H. WOOD,
Clerk District Court, Pierce Co., W. T.

28 PUGET SOUND AGRICULTURAL Co., appellants,
vs.
PIERCE COUNTY, W. T., appellee.

The clerk of the district court of Pierce County, W. T.:

You are hereby directed to issue, under the seal of said court, notice to the appellee of the filing of this precipe, that the appellants will take an appeal to the supreme court of W. T. from the judgment of the district court rendered in said cause, the said cause being an appeal from the decree of taxation of the county commissioners for the county of Pierce, W. T. You will make the same returnable to the supreme court, W. T., on the first day of the next term thereof, which will be the first Monday of December next.

Nov. 29th, 1859.

(Signed) W. H. WALLACE, *Att'y for Appellant.*

29 District court for Pierce County, W. T., March term, 1860.

PUGET SOUND AG'L Co.
vs.
PIERCE COUNTY, W. T.

This cause coming on to be heard upon an agreed statement of facts, and after argument of counsel and due deliberation it is considered and adjudged by the court that the order of taxation made by the county commissioners of Pierce County on the lands claimed by the Puget Sound Agricultural Company be, and the same is hereby, affirmed, with costs. And it further appearing to the court that important questions of law are involved in this case, it is ordered that this judgment be entered in form only, and that the original papers in this case be certified to the supreme court at its next December term.

(Signed) C. B. McFADDEN,
C. J. and J. of P. Co. Dist. Court.

30 TERRITORY OF WASHINGTON, *County of Pierce, ss:*

I, William H. Wood, clerk of the district court of the county of Pierce, W. T., do hereby certify that the foregoing are all of the original papers on file in the district clerk's office in a cause wherein Pierce County, W. T., is plaintiff and the Puget Sound Agricultural Company is defendant.

In witness whereof, I have hereunto set my hand and affixed the [SEAL.] seal of the district court aforesaid this 1st day of December, A. D. 1860.

(Signed) WM. H. WOOD,
Clerk District Court, Pierce Co., W. T.

31 TERRITORY OF WASHINGTON,
Office Clerk Sup. Court, ss:

I, Richard Lane, clerk of the supreme court of Washington Terr'y, do hereby certify that the foregoing are full, true, correct, and complete copies of the original papers certified to the supreme court of W. T. at its December term, 1860, in the case of Puget Sound Ag'l Co., appellants, *versus* Pierce County, W. T., respondents, as fully as the same remain on file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said supreme court, at Olympia, W. T., this 29th day of August, A. D. 1862.

[SEAL.] RICHARD LANE,
Clerk Sup. Court of Wash. Terr'y.

32 Be it remembered, that at a term of the supreme court of the Territory of Washington, begun and held at Olympia, the seat of government of said Territory, on the 3d day of December, 1860, it being the first Monday of said month and the day appointed by law for a session of said court, the following amongst other business was had and transacted, to wit:

Appeal from dist. court of Pierce County, W. T.

Tuesday, Dec'r 11th, 1860, 8th jud'l day.

PUGET SOUND AG'L CO.
versus
PIERCE COUNTY, W. T.

Comes now B. F. Kendall, esquire, counsel for plaintiff, and makes and files a motion in words following:

"Plaintiff comes now and asks that the county of Pierce be enjoined or restrained from levying or collecting any taxes upon the real property, the taxes upon which are in contest in this suit, until the cause is decided."

(Signed) KENDALL L. WALLACE, *pro Plaintiffs.*

33 Wednesday, Dec. 19th, 1860, 15th day.

PUGET SOUND AG'L COMPANY, appellants,
versus
PIERCE COUNTY, W. T., appellee.

The argument of this case continued until next term, and the court order and direct that the appellee in this case be restrained from the collection of the taxes assessed against the lands claimed by the Puget Sound Agricultural Company until further order of this court, on condition that the appellants execute a bond to the appellee in the penal sum of three thousand dollars, with one or more sureties, to be approved by the clerk of this court, conditioned for the payment of the taxes which may be found due and owing by them to Pierce County on the final determination of this cause. Bond to be filed within twenty days.

34 Be it remembered, that we, Edward Huggins, Giles Ford, and Henry G. Williamson, are held and firmly bound unto the county of Pierce, in the full sum of three thousand dollars, the payment of which, well and truly to be made, we bind ourselves, our heirs, and executors.

Witness our hands and seals this 21st day of December, 1860.

The condition of the above obligation is such that whereas the county of Pierce has levied a tax against the Puget Sound Agricultural Company on land in Pierce County, the same on which the tax for 1859 is in contest

before the supreme court, and said company ask that said county shall be enjoined from collecting said tax for 1860 or any more taxes until the question now pending in said court is decided: Now, therefore, if the said company shall well and truly pay said taxes and interest thereon if the same shall be adjudged legal by the said Supreme Court, then this obli-
35 gation shall be null and void; otherwise, to remain in full force and effect.

(Signed) EDWARD HUGGINS. [SEAL.]
" GILES FORD. [SEAL.]
" H. G. WILLIAMSON. [SEAL.]

Endorsed: Approved and filed Dec'r 24th, 1860.
RICHARD LANE,
Clerk Sup. Court of Washington Territory.

36 Be it remembered, that at a term of the supreme court of the Territory of Washington, begun and held at Olympia, the seat of government of said Territory on the 2nd day of December, 1861, it being the first Monday of said month and the day appointed by law for a session of said supreme court, the following, amongst other business, was had and transacted, to wit:

Saturday, Jan'y 18th, 1862.

PUGET SOUND AG'L CO., appellants,
versus
PIERCE COUNTY, W. T., appellee.

(Continued from last term.)

This day came the parties by their attorneys, and thereupon the court having heard the same, and argument of counsel, as well upon the statement of facts agreed upon, the original files and pleadings, and the transcript of the proceedings between the parties in the district court of Pierce County, as also upon all matters pertaining thereto, and the same being seen,
37 and by the court now here fully considered, and mature deliberation being thereupon had, it is therefore considered by the court that the pro forma judgment in the court below be made absolute, and that it stand the judgment of this court, in full force and effect, and that any restraining order or orders, heretofore issued, be removed; that appellants be adjudged to pay the costs taxed as follows, that is to say, costs in the dist. court of Pierce County, thirty-seven and 90-100 dollars; costs in the supreme court of W. T., Dec'r term, 1860, nineteen and 10-100 dollars; and costs in supreme court of W. T., Dec'r term, 1861, twenty and 10-100 dollars, and that execution issue therefor.

38 TERRITORY OF WASHINGTON,
Office Clerk Supreme Court, ss:

I, Richard Lane, clerk of the supreme court of Washington Territory, do hereby certify that the foregoing is a true, full, and complete copy of the record of said supreme court in the case of the Puget Sound Agricultural Company, appellants, *versus* Pierce County, W. T., December term, 1860, and December term, 1861, as fully and amply as the same remains of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said supreme court, at Olympia, W. T., this 29th day of August, A. D. 1862.

RICHARD LANE,
[SEAL.] *Clerk Sup. Court of Wash. Terr'y.*

Filed February 13, 1864.

Supreme Court of the United States.

DECEMBER TERM, 1865.

PUGET SOUND AGRICULTURAL COMPANY,
PLAINTIFF IN ERROR,

vs.

THE COUNTY OF PIERCE.

BRIEF FOR THE PLAINTIFF IN ERROR.

This cause comes from the Supreme Court of Washington Territory, and under a statute of that Territory went to that court from the court below, upon a statement of facts agreed upon by the parties to the suit. (Stat. W. T., 1854, p. 199, sec. 356.)

By this statement it was conceded, on the part of the plaintiffs in error,

1st. That they have claimed to be the owners of the lands on which they are required to pay taxes by the defendant, and that they have had the same surveyed and platted, and the plat thereof has been by them filed in the office of the surveyor general for the Territory of Washington.

2d. That the Government of the United States, in surveying the lands adjacent to the said claim of plaintiffs, has stopped the section lines at the boundaries of said claim, and has not included the same in the public survey.

3d. That a portion of the land included within the boundaries of said claim has been occupied as a military station by the Government of the United States; said Government paying rent therefor to said plaintiffs.

4th. That said plaintiffs have attempted to eject, by process of law, persons occupying a portion of said land and claiming the same under the provisions of the donation law.

It is admitted by the defendants as follows:

1st. That a large portion of the lands for which said company are taxed are unenclosed lands, and a portion thereof is occupied and claimed by citizens of the United States, claiming the same adversely to the plaintiffs, and under, as they allege, the provisions of the donation law.

2d. That American citizens in the county of Pierce, who have lived over four years on their donation claims, have not been taxed for the same, though they are outside of the claim of the plaintiffs, nor is there any tax levied on any real estate in said county, other than the lands claimed by said plaintiffs.

3d. The Government of the United States has not designated the metes and bounds of the claim of the Puget Sound Agricultural Company, except by recognizing the metes and bounds set out by the company in its instructions to the surveyor general.

4th. That the land occupied by the Government of the United States as a military station, and for which rent was paid to said plaintiffs, had some old buildings situated thereon, which have since been torn down, the said Government still occupying said land, and paying rent therefor.

Additional facts agreed upon by counsel in the above cause, to be filed and used upon the hearing.

1st. It is agreed that the Puget Sound Agricultural Company was organized in Great Britain, and has remained and continued a foreign association, joint stock company, or corporation.

2d. That the members of said company, or majority

thereof, were, and still continue to be, non-residents of the United States, and subjects of a foreign government. (Rec., pp. 7–8.)

On this agreed state of facts the supreme court of the Territory decided that the Puget Sound Agricultural Company were liable to, and should pay a tax, which had been levied by the county commissioners of Pierce county, on certain lands within the limits of Pierce county taxed to the company.

From this decision of that court the Puget Sound Agricultural Company, plaintiff in error, have brought the cause to this tribunal, and submit that the supreme court of Washington Territory erred in making such decision; and say that from the agreed statement of facts, which is all that is before this Court, it is apparent,

1st. That these lands, upon which they have been required to pay taxes, were not at the time of the levy of the tax, nor before, segregated from the public domain of the United States by any authorized public survey.

2d. That the only *portion* of these lands taxed to the company shown to be under their control, or in their possession at any time, is the *portion* occupied by the United States as a military station, for which rent is paid to the company.

3d. That a large portion of the lands are unenclosed, a portion in the possession of claimants under a donation law.

4th. That the company claim to be the owners of all the lands taxed to them, and in assertion of their claim have caused a private survey of the same to be made, and by process of law attempted to eject persons occupying a portion of the land claiming it under a donation law.

5th. That these lands were taxed to the company as real estate.

And the plaintiffs insist—

That lands thus unsegregated from the public domain could not be taxed to them as *their real estate.*

To be taxed in Washington Territory, lands must be private property, and taxed to some one.

By the organic act of the Territory, passed March 2, 1853,

section 6, it is provided that no tax shall be imposed on the property of the United States. (9 Vol. Statutes U. S., 175.)

By the first section of the revenue act of Washington Territory it is provided that a certain tax shall be levied upon every dollar's worth of real and personal property in the Territory. By the second section certain property is exempted from taxation.

By the sixth section the assessor of each county is required to asses, to persons liable to taxation, the real estate taxable to each, and it must be described by precise limits or description. (Stat. W. T., 1854, page 332, sections 1, 2, 6, 8.)

By section eighteen, page 335, the unpaid tax is made a lien on lands and town lots, and by section twenty-three a deed is to be given on sale for taxes.

2d. No location of lands by a claimant by private survey can sever them from the public domain. This can be done by public survey alone.

Ledon *et als. vs.* John Black *et als.*, 18 Howard, 473, 475.

Monard's Heirs *vs.* Massey, 8 Howard, 293.

Nor will possession of lands in a different location be received to show that a survey was erroneously made, where an imperfect Spanish title required a survey.

Stanford *vs.* Taylor, 18 Howard, 409.

These are equitable titles confirmed, but it appears that they give no vested interest in a particular location of lands until public survey, and are not specific real estate until then. But where an equitable title is accompanied by a public survey, and is to a particular piece of land, by that survey capable of being and is designated and segregated from the public domain, then the vested interest in the particular location is capable of being taxed, as where a purchaser of land from the United States has paid for it and received a final certificate of purchase, but no patent. That tract of land thus purchased, identified in location by public survey, and by "the universal practice in the West, entered upon by the purchaser," as remarked by the court in delivering the opinion:

"This land in the hands of the purchaser is real estate, descends to his heirs, and does not go to his executors or

administrators. In every legal and equitable aspect it is considered as belonging to the 'realty,' and is held liable to taxation as real estate." (By the court.)

3 Howard, 463, Carroll *vs.* Safford.

In such case possession is presumed by the court from the custom of the country; there is a sale of a particular tract designated by public survey; a payment of purchase money; a certificate to the purchaser; the fee is still in the Government, but the issuing of the patent, the evidence of title alone, is wanting to divest it.

Here are united location that cannot be changed, and a certain designation by survey by proper authority. (Possession and purchase.) And in this case alone has it been held that an equitable title to public lands could be taxed as the real estate of an individual.

Here only before patent has it been held that the public domain had become the real property of private persons liable to taxation, subject to sale for failure to pay a tax.

It is submitted that the case at bar, on the statement made, cannot be considered one in which the United States is a mere trustee for the company, only retaining the fee because the evidence of title has not been issued.

The question of location is a most important one in this cause.

As before shown, the tax must be assessed on a described piece of real estate; its location must be certain; it must not be the property of the United States; and to make the person to whom it is taxed legally liable, it must be his real estate.

The treaty of 1846 declared "that the farms and lands belonging to the Puget Sound Agricultural Company shall be confirmed to the said company."

9 Vol. U. S. Stat., p. 869.

That the United States, by act of confirmation or legislative grant, can segregate certain tracts, or farms, or lots of land from the public domain, is certain.

16 Howard, 494, Gintard *vs.* Stoddard.

And by treaty can do the same.

United States *vs.* Percheman, 7 Peters, 51.
Foster & Elam *vs.* Neilson, 2 Peters, 253.

But the court say, in 16 Howard, 512, that the recognized "claim or title should be to ascertained boundaries, or boundaries that could be ascertained. In that case they could not say that the titles would be inoperative without a survey."

The importance of a survey to the confirmee in that case is spoken of by the court on the same page.

But the proof in these cases must be by parol, unless legislation provides for survey.

Each case must depend on itself, and each person claiming to be a confirmee must show by his facts his right to a title before his claim can, *ipso facto* of confirmation, be a segregation from public domain.

Independent of any question of construction in this case, the facts exhibited here to the Court show nothing from which it can be inferred that this land taxed is the land of the company, and, as such, taken from the public domain by the treaty.

The unconfirmed pretension of the claimants is all that there is to show that these are the lands of the company. The statement of facts leaving it wholly uncertain whether or not these were the very lands, or a portion of them, mentioned in the treaty as belonging to the company, and leaving it to rest on the assertion of one of the parties alone, who has added to this assertion the act of survey and the actions at law.

In Given *vs.* Robinson, 6 California, the court held that the assertion of title to a certain piece of land, under a Mexican grant, was sufficient to make it liable to taxation as the property of the parties claiming it; but in Palmer *vs.* Boling, 8 California, 384, they substantially withdraw from that position, holding that "where lands have been segregated by public and authorized survey, under a decree of confirmation, that the land *then* became immediately taxable."

Both of these cases arose under the grant to Alvarado of the Mariposas, and the decision of this Court in favor of Fremont, the claimant. (17 Howard, 542.)

The boundaries also are the assertions of the company, and while this claim is made in good faith it cannot avail to show that those are the actual boundaries, until that is

settled in some way, either by legislative action authorizing a survey, or in some other form.

To hold that the claim to certain boundaries by an interested party bound the confirming government, and made that private property to its extent and limits, could hardly be conceded.

And yet, to make this tax legal on the 161,000 acres of land taxed, and a lien upon the particular land by its boundaries of private survey as the real estate of the company subject to sale, would be to concede that proposition.

This assertion to the exact boundaries and limits, must be taken to the whole tract, for that is taxed in a body, and the liability of a portion of it to the tax, would not render the taxation of the whole valid.

In Ballance *vs.* Forsyth (13 Howard, 18) the question of a tax title was before the court, and the court, on page 24, in speaking of the question of boundaries of a lot confirmed under the act of 3d March, 1823, to a settler upon a *lot* whose claim had been favorably reported upon, say: "Although the right of Bourbonne to *lot* 65 was recognized by the Government by the act of Congress of 1823, yet, until the public surveyor marked the lines, its position and extent could not be ascertained," and it is not perceived how the specific lot could be taxed when its boundaries were not known.

If, then, the claim of a party to certain boundaries is not sufficient, although in good faith, and the position and extent of the tract must be made known in some other form, it is not perceived how this tract, to its whole extent and asserted boundaries, can be taxed as the private property or real estate of the plaintiffs, and be held in all its scope and extent, as shown by a private survey, to be land segregated from the public domain, so as to be subject to liens and sale. And if it be not in its whole extent, then it is not at all liable to be taxed, being wholly indefinite. And even in that extreme case the location could not, on the facts, be certain, determinate, and fixed, but liable to change until the correct boundaries were ascertained.

There is, however, another view to which it is proper for the plaintiffs in error to call the attention of the Court. That is, that if the proper construction of the Treaty of Washington should be held to be that the clause referring to the farms and lands of the Puget Sound Agricultural Company does not act directly, so as to confirm them, but

that it imports a contract to be ratified and confirmed by the legislature, and which the courts would not previously regard, Foster & Elam *vs.* Neilson, 2 Peters, 253. United States *vs.* Alvarado *et als.*, 6 Peters, 691.

Then there is nothing upon which the levy of a tax could take effect, the legislature having done nothing to give effect to the contract, and it would follow—

That these farms and lands, on this construction of the treaty, until some legislation is had, are not held by the claimants by an equitable title; that the United States is not a trustee holding the legal title, but is the owner bound by the treaty to convey in such a manner as the sense of the high obligation may require, and to respect the rights of property acquired under the former owner by the law of nations.

It is hardly necessary to add that if this is the position which the plaintiffs occupy in relation to the farms and lands, which, according to the treaty, "shall be confirmed to them," there is nothing on which a levy of a tax could take effect.

And assuming that there is an equitable title in this company, before any legislation is had, then all that has been said in the first part of this argument of the plaintiffs, with reference to the necessity of a survey to segregate lands from the public domain, is applicable.

EDWARD LANDER,
For Plaintiffs in Error.

J. M. CARLISLE,
Of Counsel, &c.